

United States District Court
Southern-Western

Edward Smith
V. Petitioner
Anthony J. Bagnano
Respondent

Civil Case No 1:01 CV 14 STD
District Judge Susan D. Iott
Motion for reconsideration
of decision claim under
the 5th Amendment to
the U.S. Constitution
...Hearing Requested...

Attachments: Court order "A"
"B" (Doc. 15 ex. 9 Transcript
pages 5 thru 10), "C" Judge-
ment Appellate Ct, "D" Judgment OH S.Ct

FILED
JAMES D. DUNN
CLERK

2004 SEP 20 PM 4:10

U.S. DISTRICT COURT
SOUTHERN DIST OHIO
WEST DIV CINCINNATI

Motion and Memorandum in Support

Now comes Edward Smith, petitioner, pro se, and hereby moves this Honorable Court to reconsider its decision denying the Petitioner's Petition for Writ of Habeas Corpus on his 5th Amendment claim under the United States Constitution. The Petitioner presents the following grounds in support of this action:

(I) The Petitioner asserts that the official 1st Appellate District Judgment (Doc 15 ex. 9 - Attachment "B" TR pages 5 thru 9), (Doc 15 ex. 9 - Attachment "C"), Doc 15 ex. 12 Ohio Supreme Court Judgment, Attachment "D", will prove that that the Petitioner was not given the right to challenge his 5th Amendment claim under the United States Constitution (Attachment "B" TR page 7) ^{TR p. 8-10} Griffin v. California (1965), 380 U.S. 609, 85 S. Ct. 1229; United States v. Salvucci, 448 U.S. 83, 100 S. Ct. 2547, 65 L. Ed. 2d 619 (1980)

IN SALVUCI THE COURT REMANDED THE CASE TO ALLOW THE DEFENDANT PROVE HE HAS STANDING 448 U.S. AT 95, 100 S. CT. AT 2254.
SEE: GARY, SUPRA, ID AT 527, [6]

(II) THE FIFTH AMENDMENT PROVIDES "[N]O PERSON... SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF."
U.S. CONST. AMEND. V. THE FIFTH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION. MALLOY V. HOGAN, 378 U.S. 1, 8 (1964)

(III) THE FEDERAL CASE LAW IS WELL-ESTABLISHED IN THE PETITIONER'S INSTANT ACTION RAISES A CONSTITUTIONAL CLAIM COGNIZABLE FOR FEDERAL HABEAS CORPUS REVIEW UNDER 5TH AMENDMENT TO THE U.S. CONSTITUTION, AND HERE BY MOVES THIS COURT TO RECONSIDER ITS DECISION DENYING THE PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS.

Respectfully submitted,
Edward Smith, petitioner

Edward Smith, petitioner,
#A.346-408 WARREN CORR.

INST, P.O. BOX 120 LEBANON

OH. 45036

Proof of Service

I, Edward Smith, do hereby certify that a copy of this motion was given to prison officials for mailing, postage 1st class prepaid to: OH. Attn. General Office, Thelma T. Price. 150 East Gay St. 16th floor, Columbus, OH, 43215, on this 14 of September, 2004.

Edward Smith, petitioner
Edward Smith, petitioner
(SAME ADDRESS AS ABOVE)